

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

MELTON ETIENNE, INDIVIDUALLY
AND ON BEHALF OF OTHERS
SIMILARLY SITUATED

CIVIL ACTION NO.
MAGISTRATE JUDGE

VERSUS

FARMERS INSURANCE COMPANY /
CENTURY 21 CENTENNIAL
INSURANCE COMPANY

NOTICE OF REMOVAL

TO: Melton Etienne, Individually and on behalf of others similarly situated
Through his attorneys of record:

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PLEASE TAKE NOTICE that on February 27, 2015, Farmers Insurance Company, Inc., erroneously sued and served as “Farmers Insurance Company,” and 21st Century Centennial Insurance Company, erroneously sued and served as “Century 21 Centennial Insurance Company” (collectively “Defendants”), who were named in a civil action entitled *“Melton Etienne, Individually and on behalf of other similarly situated vs. Farmers Insurance Company / Century 21 Centennial Insurance Company”* bearing Number C-20150149 E on the docket of the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, filed for the removal of said civil action to the United States District Court for the Western District of Louisiana.

Copies of this Notice of Removal are herewith served upon you as counsel of record for Melton Etienne, individually and on behalf of other similarly situated (“Plaintiff”), and a copy of said Notice of Removal is being filed with the clerk of the aforesaid State Court, in conformity with 28 U.S.C. § 1446(d) as amended.

Defendants represent that the grounds for removal are as follows:

1.

On January 15, 2015, a petition entitled “*Melton Etienne, Individually and on behalf of other similarly situated vs. Farmers Insurance Company / Century 21 Centennial Insurance Company*” (“Plaintiff’s Petition”) was filed and is now pending in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, bearing Number C-20150149 E, on the docket of said Court, which is within the territorial limits of the Western District of Louisiana. The nature of this action is more fully stated in Plaintiff’s Petition, a copy of which is filed herewith as Exhibit A.¹

2.

On information and belief, at the time Plaintiff’s Petition was filed and now, Plaintiff was and is a resident, domiciliary, and citizen of the State of Louisiana. Specifically, Plaintiff’s Petition states that the at-issue insurance policy was issued to him in Lafayette, Louisiana. Plaintiff’s Petition, ¶¶ 5-6.

3.

Defendant Farmers Insurance Company, Inc. is a corporation organized under the laws of Kansas with a principal place of business in Kansas. Defendant 21st Century Centennial Insurance Company is a corporation organized under the laws of Pennsylvania with a principal place of business in Delaware.

¹ Exhibit A is comprised of the documents received by 21st Century Centennial Insurance Company, inclusive of the relevant service and citation documents.

4.

Plaintiff claims he was involved in an automobile accident on October 22, 2011, which caused the “total loss” of his vehicle. Plaintiff’s Petition, ¶¶ 7-8. When Defendants adjusted the automobile loss, they allegedly employed a valuation model known as “CCC Valuescope Value Report” or “CCC Valuescope.” According to Plaintiff, CCC Valuescope yields lower automobile damage valuations than do other metrics such as Kelley Blue Book and NADA book value. *See* Plaintiff’s Petition, ¶¶ 11, 14. Plaintiff claims that Defendants refused to negotiate the difference between the CCC Valuescope amount and (in his case) the NADA book value of his vehicle, resulting in an approximately \$3000 loss. *See* Plaintiff’s Petition, ¶¶ 9, 11.

5.

Plaintiff states causes of action against Defendants for breach of contract² and bad faith insurance practices under Louisiana Revised Statutes §§ 22:1892 “and/or” 22:1973.³ As a result of these allegations, Plaintiff claims entitlement to the difference between the amount tendered by Defendants and the “fair market value” of the vehicle, statutory penalties for bad faith insurance practices, and statutorily-authorized attorneys’ fees. Plaintiff’s Petition, ¶ 34.

6.

Plaintiff’s Petition seeks the certification of a class of persons described as follows: “all past and present FARMERS Insurance Company policyholders who have made claims against their policy for the total loss of a vehicle and had those claims undervalued through the use of the CCC Valuescope Value Report system and/or other unfair valuation tools used by FARMERS

² Plaintiff’s Petition, ¶ 15.

³ Plaintiff’s Petition, ¶ 16.

Insurance Company.” Plaintiff’s Petition, ¶ 35. Plaintiff’s Petition further states that “the class consists of numerous policyholders who are located throughout the State of Louisiana and the United States” Plaintiff’s Petition, ¶ 36.

Federal Subject Matter Jurisdiction — 28 U.S.C. §§ 1332(d) and 1441

7.

For the reasons described below, this action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d), the “Class Action Fairness Act” or “CAFA.” Specifically, federal jurisdiction exists because (1) there is diverse citizenship as between at least one member of the class and one of the defendants, (2) the class of plaintiffs described in Plaintiff’s Petition includes more than 100 persons, and (3) the aggregate quantum of damages suffered by members of the plaintiff class allegedly exceeds \$5 million. 28 U.S.C. §§ 1332(d)(2) and (5)(B). Therefore, pursuant to 28 U.S.C. § 1441, this case may be removed to the United States District Court for the Western District of Louisiana.

8.

Plaintiff Melton Etienne was, on information and belief and at the time Plaintiff’s Petition was filed, a resident, domiciliary, and citizen of the State of Louisiana. Plaintiff’s Petition, ¶¶ 5-6. The putative class consists of “numerous policyholders who are located throughout the State of Louisiana and the United States” Plaintiff’s Petition, ¶ 36. Defendants, both corporations, are citizens of Kansas (Farmers Insurance Company, Inc.) and Pennsylvania and Delaware (21st Century Centennial Insurance Company), respectively. Thus, there is diversity of citizenship as between at least one member of the class and one of the defendants, as required by CAFA. 28 U.S.C. § 1332(d)(2).

9.

The putative class consists of “numerous policyholders who are located throughout the State of Louisiana and the United States,” and purports to include “all past and present FARMERS Insurance Company policyholders who have made claims against their policy for the total loss of a vehicle and had those claims undervalued through the use of the CCC Valuescope Value Report system and/or other unfair valuation tools used by FARMERS Insurance Company.” Plaintiff’s Petition, ¶¶ 35-36. In light of the foregoing class allegations, and considering the extensive scope of Defendants’ insurance business, the putative class is of sufficient size to meet CAFA’s class-size threshold of more than 100 putative class members. *See* 28 U.S.C. § 1332(5)(B).

10.

The putative class consists of “numerous policyholders who are located throughout the State of Louisiana and the United States,” and purports to include “all past and present FARMERS Insurance Company policyholders who have made claims against their policy for the total loss of a vehicle and had those claims undervalued through the use of the CCC Valuescope Value Report system and/or other unfair valuation tools used by FARMERS Insurance Company.” Plaintiff’s Petition, ¶¶ 35-36. The class claims entitlement to the difference between the amount tendered by Defendants and the “fair market value” of their vehicle during loss adjustments, statutory penalties for bad faith insurance practices, and statutorily-authorized attorneys’ fees. *See* Plaintiff’s Petition, ¶ 34. In light of the foregoing class allegations, and

considering the extensive scope of Defendants' insurance business, the aggregate quantum of damages suffered by members of the plaintiff class exceeds \$5 million.⁴ 28 U.S.C. § 1332(d)(2).

Compliance with Applicable Removal Statutes

11.

Defendants have timely removed the action under 28 U.S.C. § 1446(b)(2)(B). 21st Century Centennial Insurance Company was served with Plaintiff's Petition on January 30, 2015. *See attached Exhibit B.* Thus, the thirty-day period for removal set forth in 28 U.S.C. § 1446(b)(2)(B) has not elapsed.⁵

12.

CAFA provides that defendants need not concur with one another for removal, as the requirement of unanimous defendant consent to removal applies only to removals made "solely under section 1441(a)." 28 U.S.C. § 1446(b)(2)(A). In any case, Defendants show that all defendants in the aforementioned state cause of action join in and consent to removal through this Notice.

13.

Removal under CAFA is proper even where a defendant is a citizen of the state in which the underlying civil action is brought, as the limitation on such removals only applies to actions

⁴ Defendants observe that where, as here, a state statute provides for attorneys' fees, such fees are included as part of the amount in controversy. *See e.g. Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). Specifically, Plaintiff's Petition states claims for attorneys' fees under Louisiana Revised Statutes §§ 22:1892 "and/or" 22:1973. Therefore, the attorneys' fees claims in Plaintiff's Petition are to be included in determining the amount in controversy. *See also Pardue v. River Thames Ins. Co., et al.*, 651 F.Supp. 143, 144 (M.D. La. 1986) (holding that penalties for arbitrary and capricious non-payment of insurance claim are included when calculating jurisdictional amount in controversy).

⁵ Effective service had not been made on Farmers Insurance Company, Inc. at the time of this removal.

which are “removable solely on the basis of the jurisdiction under section 1332(a).” 28 U.S.C. 1441(b)(2). In any case, Defendants show that no defendant is a citizen of Louisiana.

14.

Copies of all process, pleadings, and orders served upon Defendants in the state court proceeding are attached hereto as Exhibit C.

15.

Promptly after this Notice of Removal is filed, written notice thereof will be given to all adverse parties and a copy of this Notice of Removal will be filed with the Clerk of the aforesaid State Court to effect the removal of this civil action to this Honorable Court as provided by law.

WHEREFORE Defendants remove this action from the 15th Judicial District Court, Parish of Lafayette, State of Louisiana, bearing Case Number C-20150149 E to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

[Signature and service certificate follow]

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ Virginia Y. Dodd
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ATTORNEYS FOR DEFENDANT FARMERS
INSURANCE COMPANY / CENTURY 21
CENTENNIAL INSURANCE COMPANY

CERTIFICATE OF SERVICE

I certify that a copy of the *Notice of Removal* has been served on all counsel of record by facsimile and by United States mail, postage pre-paid, this 27th day of February, 2015.

/s/ Virginia Y. Dodd
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

MELTON ETIENNE, INDIVIDUALLY
AND ON BEHALF OF OTHERS
SIMILARLY SITUATED

CIVIL ACTION NO.
MAGISTRATE JUDGE

VERSUS

FARMERS INSURANCE COMPANY /
CENTURY 21 CENTENNIAL
INSURANCE COMPANY

PROOF OF SERVICE

Kevin W. Welsh, an attorney in the firm of Phelps Dunbar, L.L.P., counsel for Farmers Insurance Company, Inc., erroneously sued and served as "Farmers Insurance Company," and 21st Century Centennial Insurance Company, erroneously sued and served as "Century 21 Centennial Insurance Company," defendants herein, certifies that on February 27, 2015, after the Notice of Removal had been filed in the above Court, he delivered executed copies of the Notice to all counsel of record for plaintiff Melton Etienne on the addresses listed below by placing same in an envelope with sufficient postage thereon and depositing said envelope, so stamped and addressed, in the United States mail. The Notice was also transmitted by facsimile.

Further, he delivered on the same day a copy of the Notice of Removal to the Clerk of Court of the 15th Judicial District Court for the Parish of Lafayette, in the matter entitled, "*Melton Etienne, Individually and on behalf of other similarly situated vs. Farmers Insurance Company / Century 21 Centennial Insurance Company*" bearing Number C-20150149 E, on the docket of said court *via* the United States mail.

Counsel for plaintiff who received the aforementioned Notice are:

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[Signature page follows]

Respectfully submitted,

PHELPS DUNBAR LLP

BY: 

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ATTORNEYS FOR DEFENDANT FARMERS
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

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AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

Kevin W. Welsh, being duly sworn, did depose and say that she is an attorney in the firm of Phelps Dunbar, L.L.P., counsel for Farmers Insurance Company, Inc., erroneously sued and served as "Farmers Insurance Company," and 21st Century Centennial Insurance Company, erroneously sued and served as "Century 21 Centennial Insurance Company," defendants herein; that he has read the foregoing Notice of Removal which was prepared from information furnished by representatives of Farmers Insurance Company and 21st Century Centennial Insurance Company; and that all the facts and allegations therein set forth are true and correct to the best of his knowledge, information and belief.

KW

Kevin W. Welsh
La. Bar Roll No. 35380
kevin.welsh@phelps.com

Sworn to and subscribed before me this 27th day of February, 2015.

Jack Stanley

JACK B. STANLEY

Notary Public, ID No. 131678
Parish of Lafayette, State of Louisiana
Louisiana State Bar #34106
My Commission Is Issued for Life